COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 387 of 2002

Oriental Insurance Co. Ltd. ... **Appellant.**

Versus

Dilwar Singh
and others. ... **Respondents.**

Coram : Hon'ble P.C. Verma,J.
Hon'ble B.S. Verma,J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 ***(in short the Act)*** against the judgment and Award, dated 30-9-2002, passed in M.A.C.T. Petition No. 59 of 2001, Dilwar Singh and another Vs. Mahipal Singh and another, by the Motor Accident Claims Tribunal/Chamoli ***(hereinafter referred to as the Tribunal),*** whereby the learned Tribunal has awarded a sum of Rs. 3,27,000/- along with interest @ 9% per annum in favour of the claimants as against O.P. No.2-appellant. Aggrieved, the Insurance Company-O.P.No.2 has come up in appeal with a prayer to set aside the impugned judgment and award mainly on the ground of income of deceased and quantum of compensation and it has been contended the findings of the learned Tribunal are not based on evidence on record.

We have heard learned counsel for the appellant, Mr. M.K.Goel as well as learned counsel for the respondent no. 1 to 6, Mr. Manoj Tewari, and have carefully gone through the entire material on record including the impugned judgment and award.

Brief facts of the case are that the present claim petition has been filed for compensation for the death of Surendra Singh, who died as a result of injuries sustained by him in a motor accident on 25.8.2001 due to rash and negligent driving by the driver of Jeep No. UP 07-9809. It has been alleged that on the fateful day, the deceased was travelling by the said vehicle. When the Jeep reached about 100 mt. ahead of Upper Chamoli, it fell into a khadd, with the result many passengers including the deceased sustained injuries and died on the spot. It is said that dead body was brought to Gopeshwar by a booked jeep and then cremated and about Rs. 10,000/- were spent on that count. The deceased was engaged in private service and was earning Rs. 7000/- from his job and tuition. The O.P.No.2-appellant filed written statement and alleged that necessary documents in respect of the vehicle in question have not been filed, therefore, the Insurance Company is not liable to pay compensation. O.P. No.1 owner of the vehicle filed his written statement and asserted that the accident was the result of failure of steering on the spot and not the rashness and negligence on the part of the driver and that the vehicle in question was duly insured with the appellant-insurance company.

Learned Tribunal framed four Issues in the case. Issue No.1 related to rash and negligent driving by the driver of the vehicle involved in the accident. Issue No.2 related to valid permit, registration certificate, insurance and driving licence in respect of the vehicle. Issue No. 3 related to accident being the result of steering failure of the Jeep in question. Issue No. 4 related to compensation and relief. After discussing all the aforesaid issues in the light of the evidence, both oral and documentary, the Tribunal has held that the accident in question resulting into injuries and death

of the deceased was the outcome of rash and negligent driving of the driver and not due to failure of steering on the spot. It has also been held that the necessary valid papers are on record, viz. permit, 12-C, registrations certificate, 11-C and driving licence, 15-C, and from the insurance cover note, 14-C, it is proved that the vehicle was duly insured at the time of accident. The Tribunal has observed that keeping in view the academic records of the deceased it can be presumed that the deceased would have been earning Rs. 5,000/- per month and out of this amount, he would spent Rs. 2000/- per month on his parents. He was unmarried young man. Thus, annual loss of dependency has been determined at Rs. 24,000/-. In the present case, the Tribunal has considered the evidence and found the age of the deceased to be 20 years at the time of accident and his parents, father and mother, aged 55 and 45 years respectively, therefore, in the circumstances of the case, the Tribunal has applied multiplier of 13 to arrive at the just compensation for the death of the deceased. Accordingly, the amount of loss of dependency came 24000 x 13 = Rs. 3,12,000/-. The Tribunal has also awarded Rs. 5,000/- towards funeral and conveyance expenses and Rs. 10,000/- towards loss of love and affection. Ultimately, the Tribunal has decreed the claim petition for the sum of Rs. 3,27,000/- along with interest @ 9% per annum, as mentioned earlier, against the appellant.

It has been argued before us that the valid papers have not been filed before the Tribunal from the side of the claimant-respondents, therefore, the findings of learned Tribunal are perverse. We have narrated above that all valid papers are on record and learned Tribunal has considered each of them in its judgment and award, therefore, this contention is not at all tenable. The learned counsel for the appellant has failed to indicate on record as to

how these documents are not valid papers. The argument is, therefore, misconceived.

As regards the contention of the appellant challenging the quantum of compensation, it is most significant to mention here that the grounds of challenge available to the insurer-appellant have been enumerated in sub-Section (2) of Section 149 of the Act and no other ground is available to the Insurance Company. No permission under Section 170 of the Act has been sought before and granted by the Tribunal to the appellant to contest the case on the grounds available to the insured or the person against whom claim has been preferred. Section 170 of the Motor Vehicles Act deals with impleadment of insurer in certain cases. On a careful perusal of the said provisions of law, we are not inclined to accept the contentions raised on behalf of the insurer-appellant, because under the Act, the insurer has no right to challenge the judgment and award passed by the learned Tribunal except on the grounds as enumerated under sub-Section (2) of Section 149 of the Motor Vehicles Act, 1988. The law provides that appeal by the insurer can be filed on limited grounds and the grounds of challenge cannot be enlarged. We are fortified in our view by the Apex Court judgment in the Case of ***"National Insurance Company Ltd. Chandigarh Vs. Nicolletta Rohtagi and others" [(2002) 7, Supreme Court Cases, 456].*** In the case, it has been observed by the Apex Court that ***"even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle".*** Thus, in view of the law laid down by the Apex Court reported in ***(2002)7, S.C.C. 456 (supra)***, which is fully applicable in the present appeal, none of the contentions raised on behalf of the appellant is tenable and has to be ignored outright.

Ultimately, we are of the view that the present appeal is devoid of merit and must fail.

The appeal is dismissed. The impugned judgment and award is upheld. No order as to costs.

The amount in deposit with this Court be remitted to the Motor Accident Claims Tribunal concerned.

26-08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP